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In re Application of:

David MacLEAN

Serial No. 09/550,049

Filed: April 14, 2000

For: SAFETY DEVICE FOR USE
WITH A VIAL

Art Unit: 3763

Examiner: Ghafoorian, Roz

Atty Docket: 0100/0091

EXPEDITED PROCEDURERESPONSECommissioner for Patents
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Sir:

The following is a response to the Advisory Action dated February 2, 2004 in which the examiner deems claims 1-6 as allowable, but held that claims 22-27 were still not allowable since "None of the arguments that applicant has made in the response refer to claims 22-27. Applicant has not claimed a collar slidably matable about the vial or any other arguments. Therefore, claims 22-27 are still rejected."

The following comments are specifically directed to claims 22-27 vis-a-vis Bachman U.S. patent 5,733,265.

In particular, Bachman does not come close to teaching the safety device as set forth in independent claims 22 and 25. Note that each of claims 22 and 25 recites a collar, a neck extending from the collar, a housing pivotably connected to the end of the neck away from the collar, and a latch member extending from the neck in a direction towards the center of the collar. Moreover, claim 22 specifically recites that "wherein when said collar is placed about a vial and moved toward a hub of said vial until adjacent to one end

of said hub, said latch member is latched onto another end of said hub", whereas claim 25 recites "said latch member continuously biases against body of a vial when said collar is placed about said vial and moved toward one end of a hub of said vial, said latch member further biases against said hub as said collar is moved further toward said one end of said hub, said latch member latching onto another end of said hub when said collar is moved adjacent to said one end of said hub".

As noted in the Response dated January 13, 2004, Bachman does not disclose anything similar to the safety device set forth in claims 22 or 25, for Bachman does not disclose any collar that is matable to a vial, or to be placed about a vial. As noted in the previous response, at best, Bachman discloses a mount 48 that includes an opening 49 that is sized and shaped to receive at least a portion 53 of a needle hub 20 (column 4, lines 62-64; Fig. 1). Needle hub 20 is not a vial. Nor could it be argued that what the examiner asserts to be "a latch member 70" in Bachman could be considered to be the claimed latch member of claims 22 and 25, insofar as was pointed out in the previous Response, the alleged "latch member 70" in actuality is a proximal raised retention area on the exterior surface 70 of each of sidewalls 38 of the elongate shield of the Bachman needle assembly 10. Please see the second full paragraph and the paragraph bridging pages 2 and 3 of the previous Response.

Thus, addressing specifically claims 22-27, it should be noted that Bachman fails to suggest, let alone disclose: (1) a vial, (2) a collar that is placed about a vial, (3) a latch member extending from the neck member in a direction toward the center of the collar, and (4) when the collar placed about the vial is moved toward a hub [or one end of the hub] of the vial, the latch member would latch onto another end of the hub when the collar is moved adjacent to the one end of the hub. Not to be redundant, as was stated in the previous response, nothing in Bachman remotely suggests the claimed invention, neither the subject matter as set forth in claims 1-6 as now agreed to by the examiner, nor the subject matter as disclosed in claims 22-27, as addressed per this response.

In view of the above, the examiner is respectfully requested to now also allow claims 22-27.

Respectfully submitted,



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Date: Feb 5 2004